

North Dakota Implement Dealers Association

Farm Equipment Warranty Reimbursement Guide

July 20, 2017

During the 2017 North Dakota Legislative Session, the North Dakota Implement Dealers Association introduced one of the most comprehensive and impactful pieces of legislation in the history of the organization – Senate Bill 2289. The bill created numerous laws that protect farm equipment dealers from manufacturer overreach and intrusion into many aspects of dealers' business operations. The legislation further established many other dealer-friendly protections, rights, and prohibitions.

This Warranty Reimbursement Guide focuses exclusively on provisions within North Dakota state law that pertain to warranty repair/service related issues. This Guide is intended to help dealers understand their rights under the law and effectively communicate warranty reimbursement rates to manufacturers.

SCOPE AND EFFECTIVE DATE

All of the provisions, rights, and privileges identified within this guide become effective on August 1, 2017 and apply to all applicable repairs, service, payments, etc. as set forth within this Guide.

STAKEHOLDERS

The provisions within this Guide apply to both major and short-line farm equipment manufacturers and the dealers authorized to sell or service their equipment.

WARRANTY LABOR, PARTS, AND TRANSPORTATION REIMBURSEMENT

ND state law prohibits a manufacturer from paying its dealers an amount for warranty work, service, parts, or transportation that is less than the average rate charged by the dealer for similar service or sales to non-warranty customers. **The following requirements apply to all manufacturer or common entity issued product improvement programs, maintenance plans, extended warranties, certified preowned warranties, and service contracts.**

PARTS – Payment for parts used in performance of warranty work and service may not be less than the average rate charged by the dealer for similar sales to non-warranty customers.

LABOR – The hourly labor rate for both diagnosis and performance of warranty work and service may not be less than the average rate charged by the dealer for similar work for non-warranty customers.

TIME ALLOWANCES – Time allowances for both diagnosis and performance of warranty work and service may not be less than the average time spent by the dealer on similar work for non-warranty customers.

TRANSPORTATION – Transportation services are within the compensation required under state law, which includes both the labor and the equipment necessary to transport equipment under warranty to perform the service and to return the equipment to the customer.

If transporting the equipment to the dealership to perform the service is not mechanically or financially feasible, the compensation required under this section includes travel to and from the location of the equipment if the service or repairs are performed at that location.

Manufacturer payments to dealers for transportation services necessary to perform warranty work and service may not be less than the average rate charged by the dealer for similar services for non-warranty customers. Reimbursement for travel time may not exceed six hours.

DECLARING A NEW RATE

The dealer may need to submit to the manufacturer written notice of its non-warranty rates as they would apply to the respective products or services. Effective August 1, 2017, manufacturers are required to pay dealers at their declared rates. A sample "Letter of Notice" is included within this Guide.

TIMELINESS OF PAYMENT OF CLAIMS

The manufacturer may determine the manner in which claims are submitted. Once a manufacturer receives a dealer's claim, the manufacturer has thirty days to either approve or disapprove the claim. A claim not specifically disapproved in writing within thirty days after the manufacturer receives the claim must be construed to be approved, and the manufacturer is required to pay the claim within thirty days.

DEALER REMEDY

Hopefully, manufacturers will comply with the law and dealers will exercise good faith in rate declaration. However, if the manufacturer fails to begin paying the dealer at the requested rates, the dealer may need to seek an injunction from the court compelling the manufacturer to pay at the respective declared rate. The manufacturer can raise the following defenses in such a suit:

- a. That the dealer did not submit the claim in the manner required by the manufacturer.
- b. That the dealer's declared rate is not its actual and effective non-warranty rate.

AUDITS/CHARGEBACKS OF WARRANTY AND INCENTIVE CLAIMS/PAYMENTS

ND state law prohibits a farm equipment manufacturer from conducting a warranty or incentive audit or seeking a chargeback on a warranty or incentive payment **more than one year after the date of the warranty or incentive payment.**

In addition, a manufacturer is prohibited from imposing a chargeback for an incentive or warranty payment unless the manufacturer can satisfy its burden of proof that the dealer's

claim was false, fraudulent, or the dealer did not substantially comply with the reasonable written procedures of the manufacturer.

Before imposing a chargeback, a manufacturer is required to identify each claim at issue and must also provide the dealer with a written explanation for the proposed chargeback for each claim. Thereafter, the manufacturer shall provide the dealer with a reasonable amount of time, no less than forty-five days, to present additional information regarding the claim(s). Furthermore, the cumulative value of any chargeback, fees, penalties, or adverse action for an individual claim may not exceed the total direct compensation received by the dealer for the claim at issue.

It is important to understand that these audit and chargeback provisions apply to all incentive and reimbursement programs that are subject to audit by a manufacturer.

CONCLUSION

The NDIDA is committed to creating the best possible business environment for both dealers and manufacturers, knowing that the success of each is absolutely critical to the health of all. We want to continue to emphasize and cultivate the manufacturer-dealer partnership as a "TEAM" concept and work with, not against, manufacturers to resolve concerns. With this in mind, NDIDA is prepared to assist both dealers and manufacturers regarding any questions, challenges, or complications they may experience in their attempts to comply with the requirements set forth under North Dakota state law.

If you have any questions regarding this Guide or any other aspect of state law, please contact Matthew Larsgaard at matthew@ndida.com or (701) 293-6822.

This bulletin was authored by:
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LETTER OF NOTICE

<date>

<manufacturer name>

<manufacturer address>

RE: Warranty Payment Rate Declaration

TO: <specific individual if possible>

FROM: <dealer name>

<dealer address>

This letter is to inform you of <dealership name>'s current repair work, parts, and service rates.

Per North Dakota state law (NDCC § 51-26-06), a manufacturer may not pay its dealer an amount of money for farm equipment warranty work, parts, or service that is less than the average rate charged by the dealer for similar service or sales to non-warranty customers. In addition, this law applies to all manufacturer or common entity issued product improvement programs, maintenance plans, extended warranties, certified preowned warranties, service contracts, etc.

The following rates are currently charged by <dealership name> to all of our non-warranty customers:

Labor Rate – Repair (per hour): \$ _____

Labor Rate – Diagnostics (per hour): \$ _____

Average Parts Markup Rate: \$ _____

Transportation Rate – Hauling: \$ _____

Transportation Rate – Field Service: \$ _____

As of the date of this declaration, <dealership name> respectfully requests that all payments associated with the repair/service issues identified in this letter be paid at the rates specified herein.

Please forward any questions/instructions to: <name>
<address>
<phone #>

Sincerely,

John Doe

<title>